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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN H. WALKER and RAYMOND C. FROBOSILO

Application No. 09/896,505

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on March 8, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

(1) On April 10, 2003, an Examiner's Answer was mailed (Paper No. 12). A review of the Examiner's Answer reveals that there is insufficient evidence that an appeals conference was conducted by the examiner. The Manual of Patent Examining Procedure (MPEP) § 1208 (8th ed., Rev. 1, 2003) states:

On the examiner's answer, below the primary examiner's signature, the word "Conferee should be included, followed by the typed or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held. (emphasis added).

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This answer lacks the conference participants personally initialing next to their typed initials.

(2) Appellants filed a Rule 116 after final amendment on December 9, 2002 (Paper No. 7) responsive to the Examiner's final rejection mailed October 10, 2002 (Paper No. 6). In the subsequent advisory action by the examiner mailed December 24, 2002 (Paper No. 9), the examiner indicates that for purposes of appeal the amendment will be entered. However the amendment does not appear to have been entered, i.e., it is noted as "(N.E.)" on the contents of the file.

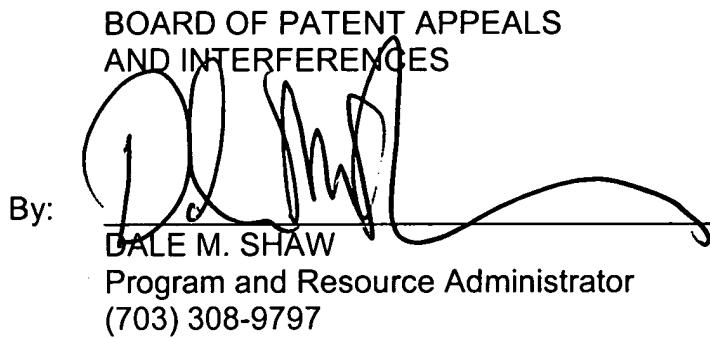
Accordingly, it is

ORDERED that the application is returned to the examiner

- (a) for the examiner to have the conferees appropriately sign/initial the Examiner's Answer to indicate that a conference was held,
- (b) to have the amendment properly entered into the record of the application,
- (c) notification to appellants in writing of the action taken in regards to items (a) and (b), and
- (d) for such further action as may be appropriate.

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).



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